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# IN THE
# COURT OF APPEALS OF INDIANA

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| WILLIE ERVING TAYLOR, | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 45A04-0712-CR-697 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Natalie Bokota, Judge Pro Tempore
Cause No. 45G02-0603-FC-25

**July 2, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAKER, Chief Judge**

Appellant-defendant Willie Erving Taylor appeals the sentences imposed by the trial court following his convictions for Burglary,[1] a class C felony, Theft,[2] a class D felony, Resisting Law Enforcement,[3] a class D felony, and two counts of Intimidation,[4] a class D felony, and the finding that he is a Habitual Offender.[5] Taylor raises the following arguments: (1) the trial court abused its discretion by denying his request for a mental health examination prior to sentencing; (2) the trial court erred by refusing to find Taylor's alleged mental health problems to be a mitigating factor; (3) the trial court erroneously ordered some of Taylor's sentences to be served consecutively without adequately explaining the decision; and (4) the sentences are inappropriate in light of the nature of the offenses and Taylor's character. Finding no error, we affirm.

## FACTS

At 1:30 a.m. on October 4, 2005, Sergeant Gary Somers of the Gary Police Department was on patrol when he noticed an old pickup truck pulling out from behind a partially-constructed Walgreen's drugstore. Sergeant Somers, who was in uniform and driving a fully-marked police cruiser, drove toward the area. The pickup truck was approaching the sergeant's vehicle, and as the vehicles passed one another, Sergeant Somers instructed Taylor, who was driving the vehicle and whose window was open, to stop. Taylor ignored the sergeant and continued driving onto the street.

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[1] Ind. Code § 35-43-2-1.

[2] I.C. § 35-43-4-2.

[3] Ind. Code § 35-44-3-3.

[4] Ind. Code § 35-45-2-1.

[5] Ind. Code § 35-50-2-8.

Sergeant Somers turned around, activated his cruiser's lights and sirens, and began to follow the pickup truck. Taylor led the sergeant on a chase for several blocks, ultimately crashing the truck and fleeing on foot into a wooded area. Other officers arrived on the scene, and Taylor was eventually located laying behind a log covered in grass by a police tracking dog. After Sergeant Somers positively identified Taylor as the suspect, Taylor said he was "going to get [Sergeant Somers] when he got out [of jail]." Tr. p. 186. Taylor was transported to jail by Lieutenant Jack Arnold. At one point, Taylor turned to Lieutenant Arnold and said, "I'll be out of here in twenty-four hours and when I see you, I'm going to put a gun to your mouth and blow off the back of your head." Id. at 73. Lieutenant Arnold testified that a chill went up his spine when Taylor threatened him. Id.

In the back of Taylor's pickup truck, police officers found a box of tools worth $6,000 that was later confirmed to belong to the construction company. They also found a microwave oven that belonged to an employee of the construction company.

On October 6, 2005, the State charged Taylor with class C felony burglary, class D felony theft, class D felony resisting law enforcement, and two counts of class D felony intimidation. On January 25, 2006, the State filed a separate information alleging that Taylor was a habitual offender.

During the pendency of the proceedings against Taylor, he was represented by five different attorneys because he filed disciplinary complaints against each attorney.[6] Following a jury trial, Taylor was found guilty as charged and adjudged a habitual offender on

September 7, 2007. At the start of Taylor's November 7, 2007, sentencing hearing, his attorney—a different attorney than the one who had represented Taylor at trial—requested a continuance so that a mental health examination of Taylor could be conducted. Neither Taylor nor any of his prior attorneys had ever raised his mental health as a potential issue during the preceding two years of litigation. The trial court denied the motion.

At the close of the hearing, the trial court found Taylor's character to be dishonest, manipulative, and antisocial, found Taylor's prior criminal history—"one of the most staggering criminal histories" the trial court had ever seen—to be an aggravating factor, and found no mitigators. Tr. p 589. The trial court sentenced Taylor to eight years imprisonment for burglary, enhanced the burglary conviction by twelve years for the habitual offender finding, to three years for theft, and to three years for resisting law enforcement, to be served concurrently. It also sentenced Taylor to three years each for the two intimidation convictions, ordering that these two sentences be served consecutively to one another and to Taylor's other sentences, for an aggregate executed sentence of twenty-six years. The trial court ordered that Taylor serve the twenty-six-year sentence consecutively to the sentences in two other felony cases. Taylor now appeals.

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[6] In fact, the Public Defender's Office eventually filed a motion to withdraw en masse from Taylor's representation because he had filed complaints against so many of its employees. The trial court denied the motion. Taylor also filed disciplinary complaints against two of the judges involved in the proceedings.

## DISCUSSION AND DECISION

### I. Mental Health Examination

Taylor first argues that the trial court erroneously denied his attorney's motion for a continuance of the sentencing hearing so that a mental health examination could be conducted. When, as here, a motion for a continuance is made on non-statutory grounds,[7] the decision to grant or deny the motion is within the trial court's discretion. Anderson v. State, 695 N.E.2d 156, 158 (Ind. Ct. App. 1998) (affirming the denial of defendant's oral motion for a continuance at the beginning of the sentencing hearing to review the defendant's mental health history). We will reverse only if the trial court abused its discretion, which occurs when the ruling was against the logic and effect of the facts and circumstances or where the record demonstrates prejudice from the denial of the requested continuance. Id. Similarly, whether to order a mental health examination as part of a presentence investigation (PSI) report is committed to the trial court's discretion. Ind. Code § 35-38-1-10; Atwell v. State, 738 N.E.2d 332, 336 (Ind. Ct. App. 2000).

Here, during the first two years of the proceedings against Taylor, neither he nor his many attorneys suggested that he had any mental health problems. His attorney did not request that a mental health examination be conducted as part of the PSI. Furthermore, Taylor's attorney had already successfully requested one continuance of the sentencing hearing and did not allege the need to obtain evidence regarding his client's mental health

[7] Although Taylor bases his argument on Indiana Code section 35-38-1-2(b), that statute applies to cases in which a presentence report is not required—cases involving misdemeanors or only class D felonies—and the trial court may sentence the defendant immediately after he or she is found guilty. Here, Taylor was

status until he requested the second continuance. Additionally, Taylor's attorney admitted that Taylor was competent and that any alleged mental health problems did not "rise to the level of either a defense of mental disease or defect . . . ." Tr. p. 544. In denying the request, the trial court explained that Taylor could be treated for any alleged mental health issues upon being committed to the Department of Correction. Under these circumstances—and given the paltry nature of the evidence supporting the allegation that Taylor suffers from mental illness, which will be explored more fully below—we cannot find that the trial court abused its discretion by denying Taylor's sudden, last-minute request for a continuance based on never-before-disclosed mental health difficulties.

## II. Sentencing

### A. Mental Health as a Mitigator

Taylor next argues that the trial court abused its discretion by refusing to find his alleged mental illness as a mitigating circumstance. We review sentencing decisions for an abuse of discretion. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on rehearing, 875 N.E.2d 218 (2007). A trial court may abuse its discretion by entering a sentencing statement that includes reasons for imposing a sentence not supported by the record, omits reasons clearly supported by the record, or includes reasons that are improper as a matter of law. 868 N.E.2d at 490-91.

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convicted of, among other things, a class C felony and was also found to be a habitual offender. Consequently, this statute does not apply.

A review of the record reveals that Taylor claimed to have voluntarily sought and received unspecified treatment at Gary Methodist Hospital and a mental health facility in Gary on several occasions. He also allegedly spoke with a counselor upon occasion. Taylor did not provide any dates for his alleged treatment: "Several times, it was years ago, off and on through the years." Tr. p. 567. He did not name his physicians and could not identify the medications he claimed had been prescribed for him for "months at a time" during mental health treatment:

> Q. For months at a time?
>
> A. Yeah. For like you take it, it calms you. If you get hypertension, it would, the doctor said that you have to take it, you know, and all that.
>
> Q. So it was blood pressure medication?
>
> A. No, it was for hypertension. Two, three months, four months at a time.

Id. at 569-70. In an attempt to establish a nexus between Taylor's mental health and his crimes, Taylor's attorney asked him why he feels "this need to steal other people's property?" Taylor responded, "[j]ust buying drugs, drinking, stuff like that." Id. at 559.

Taylor's mental health records were not entered into evidence. The probation officer who prepared the PSI report did not observe any unusual behavior. Taylor flatly refused to provide any information about his family history or mental health: "The defendant stated he feels it would be in his best interest to not answer any of my questions at this time." Appellant's App. p. 17. When Taylor testified at the sentencing hearing, he explained his refusal to divulge that information: "there's a lot of things you just can't talk about to

anybody, you know . . . ." Tr. p. 564. Under these circumstances, we simply cannot conclude that the evidence in the record supports a conclusion that Taylor suffered from mental health issues such that it was entitled to mitigating weight. Consequently, we find that the trial court did not abuse its discretion by declining to find Taylor's mental health as a mitigating circumstance.

B. Consecutive Sentences

Next, Taylor argues that the trial court erred by ordering the sentences for the two intimidation convictions to be served consecutively to one another and the sentence for his remaining crimes. Specifically, he argues that the trial court should have articulated an aggravator distinct from his criminal history, which was used to enhance the sentences, to support the imposition of consecutive sentences. Taylor is incorrect. It is well established that the same aggravating factor may be used to enhance sentences and to order that they be served consecutively. White v. State, 847 N.E.2d 1043, 1045-46 (Ind. Ct. App. 2006).

Taylor also argues that the trial court failed to provide an adequate explanation of its decision to impose consecutive sentences. Our Supreme Court recently stated that a trial court must explain why aggravating circumstances support consecutive sentences. Monroe v. State, 886 N.E.2d 578, 580 (Ind. 2008). The Monroe court concluded that the trial court had improperly sentenced the defendant where, "[a]lthough the trial court identified three aggravating circumstances, it does not explain why these circumstances justify consecutive sentences as opposed to enhanced concurrent sentences." Id.

As that quotation suggests, the former presumptive sentencing scheme applied to the Monroe defendant. Id. at 579. Where, as here, the current advisory sentencing scheme applies, a trial court does not "enhance" sentences, inasmuch as it may order any legal sentence "regardless of the presence or absence of aggravating or mitigating circumstances." Ind. Code § 35-38-1-7.1(d); see also Pedraza v. State, 887 N.E.2d 77, 80 (Ind. 2008) (recognizing that "a sentence toward the high end of the range is no longer an 'enhanced sentence' in the sense that the former regime provided").

Under the advisory sentencing scheme, therefore, trial courts need not explain why aggravating factors justify consecutive sentences "as opposed to enhanced concurrent sentences," Monroe, 886 N.E.2d at 580, inasmuch as "enhanced" sentences no longer exist. Consequently, as long as a trial court identifies aggravating circumstances and explains why these circumstances justify the sentence, the trial court will not have abused its discretion by ordering consecutive sentences. Here, the trial court supplied such an explanation. Consequently, the trial court did not abuse its discretion by finding Taylor's criminal history to support enhanced, consecutive sentences.[8]

C. Appropriateness

Finally, Taylor argues that the sentences imposed by the trial court are inappropriate in light of the nature of the offenses and his character pursuant to Indiana Appellate Rule 7(B). In reviewing a Rule 7(B) appropriateness challenge, we defer to the trial court.

[8] Even if the trial court did not abuse its discretion by imposing consecutive sentences, appellate courts may still scrutinize this decision pursuant to Appellate Rule 7(B). See Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007) (recognizing that even if a trial court acts within its discretion, appellate courts may review a sentence independently pursuant to Appellate Rule 7(B)), clarified on reh'g, 875 N.E.2d 218 (Ind. 2007).

Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). The burden is on the defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

As for the nature of Taylor's offenses, he stole thousands of dollars of property, led police officers on a vehicle chase that ended in a crash, and threatened to kill a police officer. In short, we do not find the nature of these offenses to aid Taylor's inappropriateness argument.

As for Taylor's character, he blamed his crimes on an employer who had fired him, refusing to take responsibility for his actions. Tr. p. 587. Additionally, the trial court explored Taylor's "staggering" criminal history, id. at 589, which includes ten misdemeanor convictions and eight felony convictions aside from the two used to support the habitual offender finding. The trial court also observed that Taylor had been charged with approximately sixty crimes since his seventeenth birthday. And acknowledging Taylor's allegations about a difficult childhood, the trial court made the following comments:

> Probably, if we took a poll of most of the people in the courtroom, everybody has had challenges in their childhood, some have had horrors in their childhood. But in the end it all comes down to whether we embrace the horror or make a different choice about what kind of life we're going to live. You say you're not a violent person, but you have violated people your entire adult life. You have violated their ownership, vehicles, property, credit cards, money, purses, tools, tool boxes, you have threatened violence and although you say you would not act on it, how is someone who is faced with dealing with defendants every day suppose[d] to know whether you will make good on that threat or not? . . . .

Id. at 588. The trial court found Taylor's character to be "[d]ishonest, [m]anipulative, [and a]ntisocial." Appellant's App. p. 132. The record more than supports that description. Thus,

we find that the sentences imposed by the trial court are not inappropriate in light of the nature of the offenses and Taylor's character.

The judgment of the trial court is affirmed.

RILEY, J., and ROBB, J., concur.